

Senate File 360 - Introduced

SENATE FILE 360

BY ZAUN

A BILL FOR

- 1 An Act relating to the rights of certain individuals to
- 2 petition the court for visitation of certain elder or
- 3 dependent adult relatives.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **235G.1 Definitions.**

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Court*" means the district court.

5 2. "*Dependent adult*" means the same as defined in section
6 235B.2.

7 3. "*Elder*" means a person sixty years of age or older.

8 4. "*Health care facility*" means the same as defined in
9 section 135C.1.

10 5. "*Isolation*" means an intentional act committed for the
11 purpose of social deprivation of a dependent adult or elder or
12 to prevent a dependent adult or elder from having contact with
13 visitors, family, friends, or concerned persons.

14 6. "*Petitioner*" means a person who is an adult relative
15 within the first degree of consanguinity of the proposed
16 visitee.

17 7. "*Proposed visitee*" means an elder or dependent adult
18 who is under the care or control of the respondent, is not a
19 resident of a health care facility, and is not a ward for whom a
20 guardianship or conservatorship has been established.

21 8. "*Respondent*" means the person who is alleged to be
22 isolating the proposed visitee.

23 9. "*Visitation*" means any in-person meeting between a
24 proposed visitee and the petitioner.

25 10. "*Visitation order*" means an order enjoining a party from
26 keeping the proposed visitee in isolation from contact with the
27 petitioner that is issued by a court after notice and hearing.

28 Sec. 2. NEW SECTION. **235G.2 Visitation procedure.**

29 1. A petitioner may petition the court for visitation of a
30 proposed visitee.

31 2. Venue for any action to establish, enforce, or modify
32 visitation under this section shall be in the county where the
33 proposed visitee resides or is temporarily living.

34 3. Notice of any hearing to establish, enforce, or modify
35 visitation under this chapter and a copy of the petition shall

1 be personally served upon the respondent and the proposed
2 visitee at least twenty days prior to the hearing. The notice
3 shall inform the proposed visitee and the respondent whether
4 the proposed visitee is required to appear at the hearing and
5 how to request the appointment of an attorney if the proposed
6 visitee is unable to retain an attorney.

7 4. If the proposed visitee requests the appointment of
8 an attorney, the court may appoint an attorney to represent
9 the interests of the proposed visitee at the hearing on the
10 petition if the court determines the appointment would be
11 helpful to the resolution of the matter or is necessary to
12 protect the interests of the proposed visitee.

13 5. The court shall schedule an evidentiary hearing on the
14 petition within sixty days from the date the petition is filed.

15 6. The respondent may file a response to the petition
16 that explains or denies the alleged isolation of the proposed
17 visitee at any time at least ten days prior to the hearing
18 date.

19 7. The court shall enter an order only after notice and
20 hearing and shall not issue an ex parte order under this
21 section.

22 8. The court may grant visitation under this chapter if the
23 petitioner demonstrates all of the following by a preponderance
24 of the evidence:

25 a. The respondent's prior acts of isolation of the proposed
26 visitee prevented contact with the petitioner.

27 b. The proposed visitee desires contact with the petitioner.

28 c. There are no prior protective orders issued against the
29 petitioner to protect the proposed visitee.

30 9. The court shall not order visitation under this section
31 unless the proposed visitee agrees to such visitation.

32 10. An order entered under this section may specify the
33 frequency, time, place, location, and any other terms or
34 conditions of visitation, including whether visitation by the
35 petitioner should be limited to supervised situations in which

1 a third party specified by the court is present.

2 11. An order entered under this section shall be limited
3 in duration to five years or less, and subject to termination,
4 modification, or renewal by further order of the court. A
5 request for renewal may be brought at any time within three
6 months prior to the expiration of the order.

7 12. The court may award the prevailing party court costs
8 and attorney fees in an action brought under this section. The
9 proposed visitee shall not be required to pay court costs or
10 attorney fees under this section.

11 EXPLANATION

12 The inclusion of this explanation does not constitute agreement with
13 the explanation's substance by the members of the general assembly.

14 This bill provides a procedure for a person who is an adult
15 relative within the first degree of consanguinity of a proposed
16 visitee to petition for visitation of the proposed visitee.
17 Under the bill, a proposed visitee is an elder or dependent
18 adult who is under the care or control of a respondent, is not
19 a resident of a health care facility, and is not a ward for
20 whom a guardianship or conservatorship has been established.
21 A respondent is a person who is alleged to be isolating the
22 proposed visitee.

23 The bill provides for venue, provision of notice, the
24 appointment of an attorney for the proposed visitee, and the
25 scheduling of an evidentiary hearing within 60 days of the
26 filing of the petition for visitation. A respondent may file a
27 response to the petition that explains or denies the alleged
28 isolation of the proposed visitee at any time at least 10 days
29 prior to the hearing date. The court may only enter an order
30 for visitation after notice and hearing and cannot enter an ex
31 parte order. The court may grant visitation if the petitioner
32 demonstrates by a preponderance of the evidence that the
33 respondent's prior acts of isolation of the proposed visitee
34 prevented contact with the petitioner, that the proposed
35 visitee desires contact with the petitioner, and that there

1 are no prior protective orders issued against the petitioner
2 to protect the proposed visitee. Additionally, the court may
3 only order visitation if the proposed visitee agrees to such
4 visitation. The order may specify the frequency, time, place,
5 location, and any other terms or conditions of visitation,
6 including whether visitation by the petitioner should be
7 limited to supervised situations in which a third party
8 specified by the court is present. An order is limited in
9 duration to five years or less, and is subject to termination,
10 modification, or renewal by further order of the court. A
11 request for renewal may be brought at any time within three
12 months prior to the expiration of the order. The court may
13 award the prevailing party court costs and attorney fees, but
14 cannot require the proposed visitee to pay court costs or
15 attorney fees.